

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

United States District Court
Southern District of Texas
FILED

DEC 18 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA

v.

OMAR CANALES

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Criminal No.

M-18-2121

SEALED INDICTMENT

THE GRAND JURY CHARGES:

At all times material to this Indictment:

1. A "health care benefit program" under Section 24(b) of Title 18, United States Code, was defined as "any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract."

2. The Texas Medical Assistance Program, also known as the Texas Medicaid Program ("Medicaid"), was a federal and state health care benefit program as defined by Section 24(b), United States Code. The Health and Human Services Commission, a Texas governmental agency, and the United States Department of Health and Human Services, a federal agency, administered the Texas Medicaid Program. Medicaid was implemented for the purpose of providing joint state and federal funds to pay for medical benefit items or medical services furnished to individuals of low income who were qualified and enrolled as Medicaid recipients.

3. Medicaid funds were intended to pay for covered medical services and items furnished to Medicaid recipients, by enrolled Medicaid providers, when such medical services and items were furnished in accordance with all of the rules, regulations, and laws which governed Medicaid. Covered Medicaid services included medical services and procedures furnished by

physicians and other health care professionals in their offices; as well as certain items such as diabetic and incontinent items prescribed by physicians in their offices but supplied outside their offices by independent Medicaid subscribed providers, which were commonly known as Durable Medical Equipment (“DME”) providers.

4. DME providers were required to possess a physician signed and dated Home Health Services DME/Medical Supplies Physician Order Form, commonly known as a Title XIX form, prior to billing Medicaid for DME incontinent supplies. Pursuant to Medicaid rules, a Title XIX form is to be valid for up to, but not more than, six months from the date of the physician’s signature on the Title XIX form. Medicaid recipients have a one month eligibility period with Medicaid, therefore DME providers must bill for one month of incontinent items at a time, even though prior authorization may be granted for up to six months. Medicaid required DME providers retain all orders, copies of completed, signed and dated Title XIX forms, delivery slips and corresponding invoices for all items provided to a Medicaid recipient for a minimum of five years from the date of service or until audit questions, appeals, hearing, investigations, or court cases were resolved. DME providers are required to disclose this documentation to the Texas Health and Human Services Commission or its designee, including the Office of the Texas Attorney General – Medicaid Fraud Control Unit, upon request.

THE DEFENDANT

5. Defendant OMAR CANALES, a resident of Starr County, Texas, was the owner and operator of Bluebonnet DME, LLC, a DME provider and recipient of Medicaid funds.

6. Bluebonnet DME, LLC, (“Bluebonnet DME”) located in Roma, Texas, was enrolled in the Texas Medicaid Program in or about November 2005.

COUNT 1
CONSPIRACY TO SUBMIT FALSE STATEMENTS
RELATING TO HEALTH CARE MATTERS
(18 U.S.C. §§ 371, 1035)

7. The Grand Jury incorporated by reference paragraphs 1 through 6 as though fully restated and re-alleged herein.

8. Beginning in or about January 2010, and continuing through in or about October 2016, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown, the Defendant,

OMAR CANALES

knowingly and willfully did combine, conspire, confederate and agree with others known and unknown, to violate Title 18, United States Code, Section 1035, that is, to knowingly and willfully make materially false, fictitious, or fraudulent statements or representations, or make use of a materially false writing or document knowing the same to contain a materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items and services.

OBJECT OF THE CONSPIRACY

9. The object and purpose of the conspiracy was for the Defendant OMAR CANALES and others to unlawfully enrich themselves by submitting fraudulent claims to Medicaid that were based on falsified Title XIX forms and Title XIX forms that did not exist in Bluebonnet DME records.

MANNER AND MEANS OF THE CONSPIRACY

10. The manner and means by which the Defendant and his co-conspirators sought to accomplish the object of the conspiracy included, but were not limited to, the following:

- a. It was a part of the conspiracy that in or about January 2010 to in or about October 2016, the Defendant, and his co-conspirators, falsified Title XIX forms that were used to submit, or cause others to submit, claims to Medicaid.
- b. It was further a part of the conspiracy that in or about January 2010 to in or about October 2016, the Defendant, and his co-conspirators, destroyed records to conceal falsified Title XIX forms.
- c. It was further a part of the conspiracy that in or about January 2010 to in or about October 2016, the Defendant, and his co-conspirators, destroyed records to conceal Title XIX forms that did not exist in Bluebonnet DME records.
- d. It was further a part of the conspiracy that the Defendant and his co-conspirators instructed personnel not to note dates on delivery tickets for incontinent items.
- e. It was further a part of the conspiracy that the Defendant and his co-conspirators transferred, possessed, or used, without lawful authority the names and/or identification numbers of physicians.
- f. It was further a part of the conspiracy that the Defendant and his co-conspirators caused Medicaid to pay claims based on falsified Title XIX forms.
- g. It was further a part of the conspiracy that the Defendant and his co-conspirators caused Medicaid to pay claims based on Title XIX forms that did not exist in Bluebonnet DME records.
- h. It was further a part of the conspiracy that from in or about January 2010 to in or about October 2016, the Defendant and his co-conspirators billed Medicaid in excess of \$1,000,000.00 and Medicaid paid in excess of \$800,000.00 for claims that were based on falsified Title XIXs forms and Title XIX forms that did not exist in Bluebonnet DME records.

OVERT ACTS

11. In furtherance of the conspiracy, and to accomplish its object and purpose, defendant OMAR CANALES and others committed and caused to be committed, in the McAllen Division of the Southern District of Texas, one or more of the following overt acts:

- a. From in or about January 2014 to in or about June 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient B.C. based on a falsified Title XIX form purportedly dated December 18, 2013.
- b. From in or about July 2014 to in or about December 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient B.C. based on a falsified Title XIX form purportedly dated June 12, 2014.
- c. From in or about July 2014 to in about December 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient B.C. based on a falsified Title XIX form purportedly dated June 19, 2014.
- d. From in or about March 2015 to in or about May 2015, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient B.C. based on a falsified Title XIX form purportedly dated December 11, 2014.
- e. From in or about April 2014 to in or about September 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient R.B. based on a falsified Title XIX form purportedly dated March 7, 2014.
- f. From in or about October 2014 to in or about March 2015, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient R.B. based on a falsified Title XIX form purportedly dated September 8, 2014.
- g. From in or about April 2014 to in or about September 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient

- L.A. based on a falsified Title XIX form purportedly dated March 7, 2014.
- h. From in or about September 2014 to in or about April 2015, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient L.A. based on a falsified Title XIX form purportedly dated September 4, 2014.
- i. From in or about October 2015 to in or about March 2016, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient L.A. based on a falsified Title XIX form purportedly dated September 8, 2015.
- j. From in or about February 2014 to in or about July 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient A.G. based on a falsified Title XIX form purportedly dated January 3, 2014.
- k. From in or about January 2015 to in or about June 2015, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient L.B. based on a falsified Title XIX form purportedly dated January 9, 2015.
- l. From in or about July 2013 to in or about December 2013, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.D. based on a falsified Title XIX form purportedly dated June 13, 2013.
- m. From in or about January 2014 to in or about June 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.D. based on a falsified Title XIX form purportedly dated December 13, 2013.
- n. From in or about July 2014 to in or about December 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.D. based on a falsified Title XIX form purportedly dated June 12, 2014.
- o. From in or about June 2013 to in or about November 2013, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient

- M.G. based on a falsified Title XIX form purportedly dated May 9, 2013.
- p. From in or about December 2013 to in or about May 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.G. based on a falsified Title XIX form purportedly dated November 8, 2013.
- q. From in or about June 2014 to in or about November 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.G. based on a falsified Title XIX form purportedly dated May 8, 2014.
- r. From in or about June 2013 to in or about November 2013, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.A. based on a falsified Title XIX form purportedly dated May 15, 2013.
- s. From in or about December 2013 to in or about May 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.A. based on a falsified Title XIX form purportedly dated November 14, 2013.
- t. From in or about June 2014 to in or about November 2014, the Defendant and his co-conspirators caused the submission of claims to Medicaid for Medicaid recipient M.A. based on a falsified Title XIX form purportedly dated May 16, 2014.

All in violation of Title 18, United States Code, Sections 371 and 1035.

COUNTS 2-9
FALSE STATEMENTS RELATING TO HEALTH CARE MATTERS
(18 U.S.C. §§ 1035 and 2)

12. The Grand Jury incorporates by reference paragraphs 1 through 6 and 9 through 11 as though fully restated and re-alleged herein.

13. Beginning in or about January 2010 to in or about October 2016, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown to the Grand Jury, Defendant

OMAR CANALES

in a matter involving a health care benefit program, that is, Medicaid, knowingly and willfully made materially false, fictitious, or fraudulent statements or representations, or made use of a materially false writing or document knowing the same to contain a materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, including, but not limited to the following:

Count	Medicaid Beneficiary	Date of Bill (On or about)	Description of False Statement
2	B.C.	12/11/2014	Title XIX form falsely represents that patient B.C. visited physician Mario Vasquez on December 11, 2014, and falsely represents that physician Mario Vasquez signed the Title XIX form on December 11, 2014.
3	R.B.	9/08/2014	Title XIX form falsely represents that patient R.B. visited physician Mario Vasquez on September 8, 2014, and falsely represents that physician Mario Vasquez signed the Title XIX form on September 8, 2014.
4	L.A.	9/04/2014	Title XIX form falsely represents that patient L.A. visited physician Jose Vasquez on September 4, 2014, and falsely represents that physician Jose Vasquez signed the Title XIX form on September 4, 2014.
5	A.G.	1/03/2014	Title XIX form falsely represents that patient A.G. visited physician Mario Rodriguez on January 3, 2014, and falsely represents that physician Mario Rodriguez signed the Title XIX form on January 3, 2014.
6	L.B.	1/09/2015	Title XIX form falsely represents that patient L.B. visited physician Mario Rodriguez on January 9, 2015, and falsely represents that physician Mario Rodriguez signed the Title XIX form on January 9, 2015.
7	M.D.	6/12/2014	Title XIX form falsely represents that patient M.D. visited physician Raymond Mussett on June 12, 2014, and falsely represents that physician Raymond Mussett signed the Title XIX form on June 12, 2014.

Count	Medicaid Beneficiary	Date of Bill (On or about)	Description of False Statement
8	M.G.	5/08/2014	Title XIX form falsely represents that patient M.D. visited physician Raymond Mussett on May 8, 2014, and falsely represents that physician Raymond Mussett signed the Title XIX form on May 8, 2014.
9	M.A.	5/16/2014	Title XIX form falsely represents that patient M.A. visited physician Roberto Gonzalez on May 16, 2014, and falsely represents that physician Roberto Gonzalez signed the Title XIX form on May 16, 2014.

All in violation of Title 18, United States Code, Sections 1035 and 2.

COUNT 10
AGGRAVATED IDENTITY THEFT
(18 U.S.C. §§ 1028A and 2)

14. The Grand Jury incorporates by reference paragraphs 1 through 6, 9 through 11, and 13, as though fully restated and re-alleged herein.

15. Beginning in or about December 2013, through in or about May 2015, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown to the Grand Jury, Defendant

OMAR CANALES

during and in relation to a felony violation of Title 18, United States Code, Section 1035, false statements relating to health care matters, did knowingly transfer, possess, and use, without lawful authority, one or more means of identification of another person, to wit: the name, signature or license number of physician Mario Vasquez.

All in violation of Title 18, United States Code, Sections 1028A and 2.

COUNT 11
AGGRAVATED IDENTITY THEFT
(18 U.S.C. §§ 1028A and 2)

18. The Grand Jury incorporates by reference paragraphs 1 through 6, 9 through 11, and 13, as though fully restated and re-alleged herein.

19. Beginning in or about March 2014, through in or about March 2016, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown to the Grand Jury, Defendant

OMAR CANALES

during and in relation to a felony violation of Title 18, United States Code, Section 1035, false statements relating to health care matters, did knowingly transfer, possess, and use, without lawful authority, one or more means of identification of another person, to wit: the name, signature or national provider identifier number of physician Jose Vazquez.

All in violation of Title 18, United States Code, Sections 1028A and 2.

COUNT 12
AGGRAVATED IDENTITY THEFT
(18 U.S.C. §§ 1028A and 2)

20. The Grand Jury incorporates by reference paragraphs 1 through 6, 9 through 11, and 13, as though fully restated and re-alleged herein.

21. Beginning in or about January 2014, through in or about June 2015, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown to the Grand Jury, Defendant

OMAR CANALES

during and in relation to a felony violation of Title 18, United States Code, Section 1035, false statements relating to health care matters, did knowingly transfer, possess, and use, without lawful

authority, one or more means of identification of another person, to wit: the name, signature or license number of physician Mario Rodriguez.

All in violation of Title 18, United States Code, Sections 1028A and 2.

COUNT 13
AGGRAVATED IDENTITY THEFT
(18 U.S.C. §§ 1028A and 2)

22. The Grand Jury incorporates by reference paragraphs 1 through 6, 9 through 11, and 13, as though fully restated and re-alleged herein.

23. Beginning in or about May 2013, through in or about December 2014, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown to the Grand Jury, Defendant

OMAR CANALES

during and in relation to a felony violation of Title 18, United States Code, Section 1035, false statements relating to health care matters, did knowingly transfer, possess, and use, without lawful authority, one or more means of identification of another person, to wit: the name, signature, national provider identifier number, or license number of physician Raymond Mussett.

All in violation of Title 18, United States Code, Sections 1028A and 2.

COUNT 14
AGGRAVATED IDENTITY THEFT
(18 U.S.C. §§ 1028A and 2)

24. The Grand Jury incorporates by reference paragraphs 1 through 6, 9 through 11, and 13, as though fully restated and re-alleged herein.

25. Beginning in or about June 2013, through in or about November 2014, in the McAllen Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the exact dates being unknown to the Grand Jury, Defendant

OMAR CANALES

during and in relation to a felony violation of Title 18, United States Code, Section 1035, false statements relating to health care matters, did knowingly transfer, possess, and use, without lawful authority, one or more means of identification of another person, to wit: the name, signature or license number of physician Roberto Gonzalez.

All in violation of Title 18, United States Code, Sections 1028A and 2.

NOTICE OF GOVERNMENT'S DEMAND FOR FORFEITURE

**I. Forfeiture Statute for Federal Health Care Offense
(18 U.S.C. § 982(a)(7))**

As a result of the criminal violations set forth in Counts 1 through 9, the United States gives notice that it intends to forfeit, but is not limited to, the below-listed property from Defendant **OMAR CANALES**. The Defendant shall forfeit all right, title, and interest in said property to the United States pursuant to FED. R. CRIM. P. 32.2 and 18 U.S.C. § 982(a)(7), which states:

18 U.S.C. § 982. Criminal Forfeiture

(a)(7) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

**II. Forfeiture Statute for Fraud Conspiracy
(18 U.S.C. § 981(a)(1)(C))**

As a result of the criminal violation set forth in Count 1, the United States gives notice that it intends to forfeit, but is not limited to, the below-listed property from Defendant **OMAR CANALES**. Defendant shall forfeit all right, title, and interest in said property to the

United States pursuant to FED. R. CRIM. P. 32.2 and 18 U.S.C. § 981(a)(1)(C), which is made applicable to criminal forfeiture by 28 U.S.C. § 2461(c). Section 981 provides:

18 U.S.C. § 981. Civil Forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to...any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

III. Subject Property

This Notice of Demand for Forfeiture includes, but is not limited, to the following:

Money Judgment:

A sum of money that represents the amount of proceeds that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense for which the Defendant is convicted.

Substitute Assets:

If any of the properties described above, as a result of any act or omission of Defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States to seek forfeiture of any other property owned by Defendant up to the value of said Money Judgment as substitute assets, pursuant to FED. R. CRIM. P. 32.2 and 21 U.S.C. § 853(p).

A TRUE BILL

FOREPERSON OF THE GRAND JURY

RYAN PATRICK
UNITED STATES ATTORNEY



MARIAN SWANBERG
SPECIAL ASSISTANT UNITED STATES ATTORNEY